

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

DONALD RAY WHITE, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	} } } } } } } } } } }	Case No.: 5:09-cr-00301-RDP-JEO-1 5:19-cv-08029-RDP
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MEMORANDUM OPINION

Donald Ray White filed a Motion for a writ of habeas corpus pursuant to § 2241 in the Middle District of Alabama. (Doc. # 1). In that Motion, Petitioner sought to vacate the sentence imposed upon him on June 22, 2010. (*Id.*). Judge Myron Thompson construed Petitioner's Motion as arising under 28 U.S.C. § 2255 and, after accepting and adopting the Report and Recommendation of Magistrate Judge Charles S. Coody, transferred this matter to the undersigned. (Docs. # 2, 5, 8).

This matter is now before the court on the Government's Motion to Dismiss White's Motion Pursuant to 28 U.S.C. § 2255. (Doc. # 12). The Government seeks to dismiss White's Motion on two grounds: (1) because it is a second or successive motion pursuant to 28 U.S.C. § 2255 for which this court lacks jurisdiction to adjudicate without approval from the Eleventh Circuit Court of Appeals; and (2) because it is untimely.

On June 23, 2021, the court ordered White to respond to the Government's Motion. (Doc. # 15). No response has been filed.


On December 11, 2012, White filed his first Motion to Vacate under 28 U.S.C. § 2255. (Case No. 5:09-CR-301-RDP-JEO-1, Doc. # 39). On March 6, 2013, that Motion was denied. (Case No. 5:12-CV-8056-IPJ, Doc. # 9).

The instant Motion is a successive § 2255 petition. A second or successive motion under 28 U.S.C. § 2255 “must be certified as provided in section 2244 by a panel of the appropriate court of appeals.” 28 U.S.C. § 2255. Section 2244 provides that “before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Absent an order from the court of appeals authorizing the consideration of the application, “the district court lacks jurisdiction to consider a second or successive petition.” *Farris v. United States*, 333 F. 3d 1211, 1216 (11th Cir. 2003); *see also United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005).

Here, White has provided no evidence to the court that he either sought or received permission from the Eleventh Circuit for the filing of this successive Motion. For that reason, this court may not proceed with consideration of White’s challenge to his conviction and sentence. Accordingly, the Motion (Doc. # 1) is due to be denied without prejudice.

A separate order in accordance with this memorandum opinion will be entered.

DONE and **ORDERED** this August 4, 2021.


R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE